

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6794 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

VIJAYBHAI JIVANBHAI SURVAIYA

Versus

DISTRICT MAGISTRATE

Appearance:

MR PRAVIN GONDALIYA for Petitioner

MR. D.P. JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/12/1999

ORAL JUDGEMENT

The District Magistrate, Bhavnagar, in exercise of power under Section 3(1) of the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred as as 'the PASA Act') ordered detention of the petitioner on 17.3.1999. In the grounds of detention, the detaining authority took into consideration three offences registered against the detenu with Bhavnagar A and B Division police station for

offences of theft etc. The authority also took into consideration the statements of three anonymous witnesses. The authority exercised powers under Section 9(2) of the PASA Act and maintained the anonymity of the witnesses on being subjectively satisfied about the correctness of the statements and genuineness of the fear expressed by the witnesses qua the petitioner in respect of person and property of the witnesses. The authority came to the conclusion that resorting to less drastic remedy is not possible as the petitioner is required to be immediately prevented from pursuing his illegal and anti social activities. The order of detention was thus passed.

2. The petitioner challenges the order mainly on the ground that the authority has wrongly exercised power under Section 9(2) of the PASA Act. There was no time to consider the pros and cons and correctness and genuineness of the statements of the witnesses for the detaining authority and the order is passed in a mechanical manner without application of mind. This has resulted into infringement of the rights of the detenu of making an effective representation.

3. Mr. Gondaliya, learned advocate appearing for the petitioner has restricted his arguments to the above grounds. He has drawn attention of this court to the fact that the statements of the anonymous witnesses were recorded by the sponsoring authority on 10.3.1999. The same were verified by the Deputy Superintendent of Police, Bhavnagar City, on 11.3.1999 and the same were verified by the detaining authority on 17.3.1999 by putting a one word verification. The detaining authority passed the order on 17.3.1999 itself and therefore there was non-application of mind. The authority had no time to take into consideration the fear expressed by the witnesses vis-a-vis the right of the detenu and the question of public interest. Mr. Gondaliya has therefore urged that the petition may be allowed.

4. Mr. Joshi, learned A.G.P., has opposed this petition.

5. Considering the rival side contentions raised before this court, the undisputed facts are that the statements of anonymous witnesses were recorded by the sponsoring authority on 10.3.1999. The same were verified by the Deputy Superintendent of Police, Bhavnagar on 11.3.1999 and by the detaining authority on 17.3.1999. On 17.3.1999 itself the order of detention was passed.

6. While exercising the powers under Section 9(2) of the PASA Act, it is expected of the detaining authority to take into consideration the public interest on one hand and the interest/right of the detenu on the other and strike a balance between the two. This requires proper and considered opinion formation. In the instant case the entire exercise of verifying the statements and passing the order under PASA Act is undertaken on the same date. The detaining authority has not filed any reply. This court is at loss to appreciate how and what material was considered by the detaining authority and how in a such a short spell the authority could pass the order taking into consideration all relevant aspects when the statements of three witnesses are verified and the order is passed on the same date. In order to satisfy the authority about the genuineness of the fear expressed by the witnesses and the correctness of the facts stated in the statements, the detaining authority must have some material before it which would call for consideration. This court is at loss to know whether there was any such material before the detaining authority as the detaining authority has not filed any affidavit in reply.

7. In this view of the matter and taking into consideration the decision of a Division Bench of this Court in the case of Kalidas C. Kahar Vs. State reported in 1993(2) GLR 1659 the petition deserves to be allowed.

8. The petition is therefore allowed. The order of detention dated 17.3.1999 passed by the District Magistrate, Bhavnagar District, Bhavnagar is quashed and set aside. The detenu be set at liberty forthwith if not required in any other case. Rule is made absolute. No order as to costs.

(A.L. DAVE, J)

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